CREDIT UNION COMMISSION
Rules Committee Meeting

Credit Union Department Building
914 East Anderson Lane
Austin, Texas

June 19, 2014

AGENDA

TAB		PAGE
A.	Call to Order (2:00 p.m.) – Chair Rob Kyker a. Ascertain Quorum b. Appoint Recording Secretary c. Invitation for Public Input Regarding Rulemaking for Future Consideration	**4**
B.	Receive and Approve Minutes of the Rules Committee Meeting of February 20, 2014	**7**
C.	Unfinished Business	
	a. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.501 Concerning Director Eligibility and Disqualification	**20**
	b. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Withdraw the Previously Published Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, and Approve for Republication the Revised Proposed Amendments to 7 TAC Section 91.502	**24**
D.	New Business	
	a. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Sections 91.701 (Lending Powers), 91.703 (Interest Rates), 91.705 (Home Improvement Loans), 91.706 (Home Equity Loans), 91.707 (Reverse Mortgages), 91.708 (Real Estate Appraisals or Evaluations), 91.709 (Member Business Loans), 91.710 (Overdraft Protection), 91.711 (Purchase and Sale of Member Loans), 91.712 (Plastic Cards), 91.713 (Indirect Lending), 91.714 (Leasing), 91.715 (Exceptions to the General Lending Policies), 91.716 (Prohibited Fees), 91.717 (More Stringent Restrictions), 91.718 (Charging Off or Setting Up Reserves), 91.719 (Loans to Officials and Senior Management Employees), and 91.720 (Small-Dollar, Short-Term Credit)	**30**
	b. Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.704 Concerning Real Estate Lending	**48**
	c. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Sections 153.1 (Definitions), 153.5 (Three percent fee limitation: Section 50(a)(6a)(E)), 153.15 (Location of Closing: Section 50(a)(6)(N)), and 153.51 (Consumer Disclosure: Section 50(g)	**53**

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D. New Business (continued)

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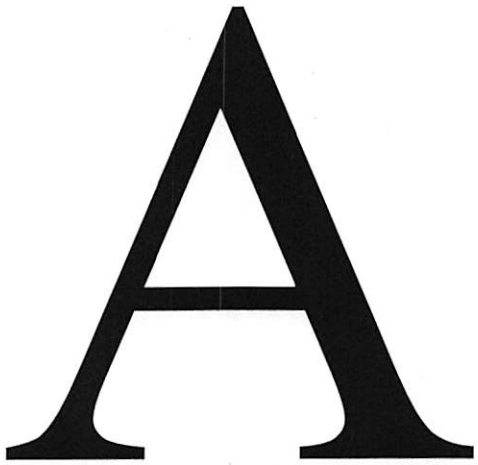
E. Discussion of and Possible Vote to Establish Date for Next Committee Meeting (October 16, 2014 at 2:00 p.m.)

F. Adjournment

In the event the Committee does not finish deliberation of an item on the first day for which it was posted, the Committee might recess the meeting until the following day at the time and place announced at the time of recess.

Persons with disabilities may request reasonable accommodations such as Interpreters, alternative formats, or assistance with physical accessibility. Request for special accommodations must be made 72 hours prior to the designated time set for the meeting by contacting Linda Clevlen by mail, telephone, or email.



CALL TO ORDER

TEXAS CREDIT UNION COMMISSION

RULES COMMITTEE

Committee Members

- ***Rob Kyker, Chairman***
- ***Sherri B. Merket***
- ***Allyson "Missy" Morrow***
- ***Kay Stewart***
- ***A. John Yoggerst***
- ***Manuel "Manny" Cavazos, Ex-Officio***

Legal Counsel

- ***Nancy S. Fuller***

Staff

- ***Harold E. Feeney***
- ***Stacey McLarty***
- ***Isabel Velasquez***

FUTURE COMMITTEE MEETING DATES

The committee meets on an "as needed" or "subject to the call of the chair" schedule. If a meeting is scheduled, it would normally begin at 2:00 p.m. on the day before a regularly scheduled commission meeting.

B

RULES COMMITTEE MEETING MINUTES

A draft copy of the minutes of the Committee's meeting held on February 20, 2014, is located under ***TAB B***.

RECOMMENDED ACTION: The Department requests that the Committee approve the minutes as presented.

RECOMMENDED MOTION: I move that the minutes of the Committee's February 20, 2014, meeting be approved as presented.

RULES COMMITTEE
MEETING MINUTES
FEBRUARY 20, 2014

A. CALL TO ORDER – Chairman Rob Kyker called the meeting to order at 2:00 p.m. in the boardroom of the Texas Higher Education Coordinating Board, Austin, Texas pursuant to Chapter 551 of the Government Code. Other members present included Sherri Merket, Kay Stewart, John Yoggerst, and ex-officio member Manny Cavazos. Missy Morrow was absent due to a scheduling conflict. Commission Members Gary Tuma, Vik Vad, and Gary Janacek also attended the meeting but did not participate in the deliberations of the Committee. Assistant Attorney General Jim Crowson was also in attendance. Staff members in attendance were Harold E. Feeney, Commissioner and Stacey McLarty, Assistant Commissioner and General Counsel. Chairman Kyker appointed Isabel Velasquez as recording secretary. The Chair also inquired and the Commissioner confirmed that the notice of the meeting was properly posted **(February 11, 2014, TRD#20140010 44).**

- **INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION** – Chairman Kyker invited public input on matters regarding rulemaking for future consideration by the committee. There was none.

B. RECEIVE MINUTES OF PREVIOUS MEETING (June 14, 2012)

Ms. Merket moved to accept the minutes of the June 14, 2012 meeting as presented. Mr. Yoggerst seconded the motion, and the motion was unanimously adopted.

C. NEW BUSINESS

(a) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.401. Commissioner Feeney noted that the Commission had previously approved for publication and comment the proposed amendments to Rule 91.401. He reported that no comments were received during the comment period regarding the proposed amendments.

After a short discussion, Ms. Stewart moved to recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.401** as previously published in the *Texas Register*. Ms. Merket seconded the motion and the motion was unanimously adopted.

(b) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.405. Commissioner Feeney noted that the Commission had previously approved for publication and comment the proposed amendments to Rule 91.405. He reported that no comments were received during the comment period regarding the proposed amendments.

After a short discussion, Ms. Stewart moved to recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.405** as previously published in the *Texas Register*. Ms. Merket seconded the motion and the motion was unanimously adopted.

(c) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Repeal 7 TAC Part 6, Chapter 91, Subchapter K. Commissioner Feeney noted that the Commission had previously approved for

publication and comment the proposed repeal of 7 TAC Part 6, Chapter 91, Subchapter K in its entirety. He reported that no comments were received during the comment period regarding the proposed repeal of these rules.

After a short discussion, Ms. Merket moved to recommend that the Commission repeal **7 TAC Part 6, Chapter 91, Subchapter K** as previously published in the *Texas Register*. Ms. Stewart seconded the motion and the motion was unanimously adopted.

(d) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Part 6, Chapter 93. Commissioner Feeney noted that as required by Section 2001.39 of the Government Code and the Commission's Rule Review Plan, staff reviewed all of the rules within 7 TAC Part 6, Chapter 93 in its entirety. He explained that staff believes that the reasons for adopting these rules continue to exist and that no changes should be made at this time. He further noted that no comments were received during the review period.

After a brief discussion, Mr. Yoggerst moved to recommend that the Commission find that the reasons for adopting the rules contained in **7 TAC Part 6, Chapter 93** continue to exist and that all of the rules be readopted without change. Ms. Merket seconded the motion and the motion was unanimously adopted.

(e) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.501 Concerning Director Eligibility and Disqualification. Commissioner Feeney indicated that given the significant changes in regulations and corporate governance, continuing education programs are important components of board effectiveness. He noted that these programs can help directors further understand their roles and develop the technical knowledge needed to discharge their responsibilities effectively. Accordingly, staff is proposing to clarify that the credit union's policy should include a requirement that credit unions annually plan to provide continuing education for their directors. Mr. Feeney pointed out that it is not the intent of this proposal to increase examiner scrutiny of the skills of individual directors. Rather, examiners will evaluate whether the credit union has a plan in place to make available training to enhance the knowledge of its directors.

Mr. Yoggerst inquired about the availability and affordability of continuing education courses for the smaller credit union directors. Mr. Feeney noted that the trade associations, both on the state and national level, provide a number of educational opportunities for directors. He further explained that the Cornerstone Credit Union League is sympathetic to the impact that training cost can have on smaller institutions and it provides scholarships and offers various low-cost opportunities for smaller credit unions to get the needed training.

Ms. Merket inquired about the number of training hours each director would be required to complete each year. Commissioner Feeney noted that the proposal does not prescribe a specific amount of training. The proposal allows the credit union to tailor the annual plans to the individual needs of each director and the operations of the credit union.

Chairman Kyker recognized a number of credit union representatives who were present to speak on this proposal.

John Lederer – President, Credit Union of Texas. Mr. Lederer expressed support for the idea of continuing education for directors. He explained that several years ago Credit Union of Texas implemented a continuing education plan, which requires each director to complete 9 clock hours of training every year. He further indicated that the credit union's board of directors believes in continuing education and is supportive of the proposal.

Ed Zingleman – Board Member, Texas Dow Employees Credit Union. Mr. Zingleman indicated that Texas Dow Employees Credit Union has also implement a director's continuing education program and there really is no need to specify in the rule a specific number of training hours that must be completed each year.

After a lengthy discussion, Ms. Merket moved to recommend that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.501** concerning director eligibility and disqualification. Ms. Stewart seconded the motion and the motion was unanimously adopted.

(f) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures. Commissioner Feeney indicated that the Texas Finance Code specifically provides that a person may not receive compensation for serving as a director of a credit union. The statute does allow credit unions to pay director fees

as authorized by the Commission. He explained that the Commission promulgated Rule 91.502, which authorizes the payment of reasonable fees for directors and/or committee members attending duly called meetings. Mr. Feeney reported that few credit unions have actually exercised this authority; however, over the years the amount of the fees being paid has escalated raising the question of whether the fees are, in fact, reasonable. Mr. Feeney suggested that the decision regarding the appropriate amount of a fee should be left to each board in the context of the circumstances of their credit union. However, the decision to pay these fees should be transparent and based on principles that ensure fairness, reasonableness, and accountability. Accordingly, the proposal emphasizes disclosure rather than imposing limits or ceilings on the amount of the fees. He further explained that the proposal also eliminates the requirement for advance notice regarding the payment of fees and replaces it with specific enforcement power to limit or restrict the payment of fees if circumstances warrant.

After a short discussion, Ms. Merket moved to recommend that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.502** concerning director eligibility and disqualification. Mr. Yoggerst seconded the motion and the motion was unanimously adopted.

Chairman Kyker designated Sherri Merket to serve as the presiding officer (Vice Chair) of the Rules Committee in the Chair's absence or inability.

Chairman Kyker reminded everyone that the next regular meeting of the Committee has been tentatively scheduled for June 19, 2014, at 2:00 p.m., in Austin.

ADJOURNMENT -- There being no other items to come before the Committee, and without objection, the meeting was adjourned at 2:38 p.m.

Rob Kyker
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

C

PROCEDURES FOR ADOPTING A PROPOSED RULE

1. A proposed rule is prepared by Credit Union Department staff and presented to legal counsel (Attorney General) for review.

2. The proposed rule is presented to the commission for consideration.

3. The commission reviews, amends, adopts, refers back to staff, or tables the proposed rule.

4. The proposed rule is adjusted by staff (if required), furnished to legal counsel, and transmitted to the ***Texas Register*** for publication as a "proposed" rule.

5. A 30-day comment period follows initial publication which also is made in the Department's monthly newsletter or by a special mailing to credit unions.

6. The commission may reconsider the rule anytime after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in the rule reverting to step four.

7. The rule is adopted as "final" and transmitted to the ***Texas Register*** for publication as a final rule. The rule becomes effective 20 days following filing for publication.

8. The rule is published or announced through the Department's newsletter.

EMERGENCY RULES

Rules, which are approved by the commission for emergency adoption, are transmitted to the ***Texas Register*** for filing. These rules become effective immediately upon filing unless another effective date is specified. They can be effective only for 120 days with a renewal provision for an additional 60 days -- a maximum of 180 days. "Day one" is the day of filing or the date specified as the effective date. While these emergency rules are in effect, regular rules should be initiated using the normal procedure described above. The Department rarely adopts emergency rules.

PROCEDURES FOR REQUIRED RULE REVIEW

Section 2001.39, Government Code, requires that a state agency review and consider for re-adoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. To comply with this requirement, the Commission follows the procedure below:

1. Every four years, the Commission adopts and publishes a Rule Review Plan, which establishes a date for the required review of each existing rule.
2. At least sixty days prior to a particular rule's scheduled review date, the Department publishes notice in the Newsletter reminding interested persons of the review and encouraging comments on the rules up for review.
3. Staff reviews each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule's structure as well as the specific language used is both clear and understandable.
4. If in reviewing existing rules, staff believes certain amendments may be appropriate, proposed amendments are prepared by staff and presented to the Rules Committee for review.
5. At a public meeting, the Rules Committee accepts public testimony on each rule subject to review and considers staff recommended changes. The Committee reviews each rule and then amends the staff proposal and refers it to the Commission, refers the proposal back to staff, or refers the proposal, as recommended by staff, to the Commission.
6. The Committee's recommendation is presented to the Commission for consideration.
7. The Commission reviews, amends, approves the proposal for publications, refers it back to the Committee, or tables the proposed amendment.
8. If the Commission approves the proposal for publication, it is transmitted to the ***Texas Register*** for publication as a "proposed" rule amendment.
9. A 30-day comment period follows initial publication which also is announced in the Department's monthly newsletter.
10. The commission may reconsider the rule anytime after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in re-publication of the proposal.

11. The rule as amended is adopted and transmitted to the ***Texas Register*** for publication as a final rule. The rule becomes effective 20 days following filing for publication.
12. The amended rule is announced through the Department's newsletter and copies are made available to credit unions.

UNFINISHED BUSINESS

The Committee will discuss and possibly vote on potential recommendations to the Credit Union Commission concerning the following items:

a. The adoption of the Proposed Amendments to **7 TAC Section 91.501** Concerning Director Eligibility and Disqualification.

b. The Withdrawal of the Previously Published Proposed Amendments to **7 TAC Section 91.502** Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, and the republication for Comment of the Revised Proposed Amendments to **7 TAC Section 91.502**.

RECOMMENDED ACTION: The Department requests that the Committee take action as indicated on the documents contained on ***Tab C.***

DIRECTOR ELIGIBILITY AND DISQUALIFCATION

C. (a) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.501.

BACKGROUND: At its February meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.501. No comments were received in regards to the proposed amendments.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.501.

RECOMMENDED MOTION: I move that we recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.501** as previously published in the *Texas Register.*

<p>The Credit Union Commission (the Commission) adopts amendments to <*>91.501 concerning Direction of Affairs, Director Eligibility and Disqualification with no changes to the text published in the March 7, 2014 issue of the <eti>Texas Register<et> (39 TexReg 1588).

<p>The amendments are proposed to ensure that credit unions provide for the ongoing education of directors to achieve and maintain professional competence.

<p>The Commission received no comments on these proposed changes.

<p>This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

<p>The amendments are adopted under Texas Finance Code, <*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code <*>122.053, which sets forth the duties of directors, and under Texas Finance Code <*>122.054, which directs the commission to establish qualifications for a director.

<p>The specific sections affected by the proposed amended rule are Texas Finance Code, <**>122.053 and 122.054.

<*>91.501. Director Eligibility and Disqualification.

(a) Board Representation. The credit union's bylaws shall govern board selection and election procedures. No credit union shall adopt or amend its articles of incorporation or bylaws to designate or reserve one or more places on the board of directors for any classification that results in a restriction or infringement upon the equal rights of all members to vote for, or seek any position on, the board of directors of the credit union. In addition, each credit union shall adopt policies and procedures that are designed to assure that the elections of directors are conducted in an impartial manner.
(b) Qualifications. A member may not serve as director of a credit union if that member:
(1) has been convicted of any criminal offense involving dishonesty or breach of trust;
(2) is not eligible for coverage by the blanket bond required under the provisions of the Act, or §91.510 of this title (relating to Bond and Insurance Requirements);
(3) has had a final judgment entered against him/her in a civil action upon the grounds of fraud, deceit, or misrepresentation;
(4) has a payment on a voluntary obligation to the credit union that is more than 90 days delinquent or has otherwise caused the credit union to suffer a financial loss;
(5) has been removed from office by any regulatory or government agency as an officer, agent, employee, consultant or representative of any financial institution;
(6) has been personally made subject to an operating directive for cause while serving as an officer, director, or senior executive management person of a financial institution; or has caused or participated in a prohibited activity or an unsafe or unsound condition at a financial institution which resulted in the suspension or revocation of the financial institution's certificate of incorporation, or authority or license to do business;
(7) has failed to complete and return a director application in accordance with subsection (c) of this section; or
(8) refuses to take and subscribe to the prescribed oath or affirmation of office.
(c) Director application. Any member nominated for, or seeking election to, the board of directors shall submit a written application in such form as the credit union may prescribe. The application shall be submitted either to the nominating committee prior to its selection of nominees; or to the board chair within 30 days following the election of a member who was not nominated by the nominating committee or who was appointed by the board to fill a vacancy. The applications of the elected/appointed directors shall be incorporated into and made part of the minutes of the first board meeting following the election/appointment of those directors. Applications of unsuccessful candidates shall be destroyed or returned upon request. The commissioner may review and require that changes be made to any application form, which is deemed inadequate or unfairly discriminates against certain classes of members.
(d) Director continuing education. Directors must develop and maintain a fundamental, ongoing knowledge of the regulations and issues affecting credit union operations to assure a safe and sound institution. A credit union shall, by written board policy, establish appropriate continuing education requirements and provide sufficient resources for directors to achieve and maintain professional competence. The policy shall include a provision requiring the credit union to prepare, on an annual basis, a continuing education plan for its Directors that is appropriate to the size and financial condition of the credit union and the nature and scope of its operations.
(e) Prohibited conduct. A director shall not:

(1) Divulge or make use of, except in the performance of office duties, any fact, information, or document not generally available to the membership that is acquired by virtue of serving on the board of the credit union.
(2) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, or any person residing in the director's household.
(3) Accept, directly or indirectly, any gift, fee, or other present that is offered or could be reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of the credit union.
(f) Recall of director(s).
(1) Petition. Under procedures set out in the credit union's bylaws, members may request a special membership meeting to consider removing the entire board or individual directors for cause relating to serious mismanagement or a breach of fiduciary duties. The board shall conduct any resulting special meeting as prescribed in the credit union's bylaws.
(2) Membership Vote. The members of a credit union may remove a director by a vote of two-thirds of those members voting at the special meeting; provided, however, that:
(A) a separate vote is conducted for each director sought to be recalled;
(B) the members voting shall constitute not less than 10% of the membership eligible to vote in the recall election;
(C) all members are given at least 30 days notice of the meeting which shall state the reasons why the meeting has been called; and
(D) the affected director(s) is afforded an opportunity to be heard at such meeting prior to a vote on removal.
(3) Vacancy on the Board. If a vacancy occurs as a result of a recall, the vacancy shall be filled by the affirmative vote of a majority of the remaining directors. If the entire board is removed as a result of the recall, the members shall fill the vacancies at the recall meeting. Directors elected to fill a recall vacancy shall hold office only until the next annual meeting when any unexpired terms shall be filled by vote of the members.
(g) Absences. Any director who fails to attend three (3) consecutive regularly scheduled meetings without an excuse approved by a majority vote of the board, or who fails to attend six (6) regularly scheduled meetings during any twelve-month period following the director's election or appointment is automatically removed from office. A new person shall be appointed to fill any vacancies resulting from poor attendance within sixty days of the date of the meeting that led to the automatic removal. The commissioner in the exercise of discretion may extend the deadline for filling the vacancy.

DIRECTOR/COMMITTEE MEMBER FEES, INSURANCE, REIMBURSABLE EXPENSES, AND OTHER AUTHORIZED EXPENDITURES

C. (b) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Withdraw the Previously Published Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, and approve the republication for Comment of the Revised Proposed Amendments to 7 TAC Section 91.502.

BACKGROUND: At its February meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.502. The amendments are withdrawn, modified, and proposed for republication in response to unofficial comments received on the earlier proposal.

The revised proposal clarify that meeting fees which are not excessive may be paid to directors, honorary directors, advisory directors, and committee members. The amendments require annual disclosure of fees to the membership. The amendment grants enforcement authority to the Credit Union Department to limit or prohibit meeting fees.

RECOMMENDED ACTION: The Department requests that the previous proposal be withdrawn and that the revised amendments to **7 TAC Section 91.502** be approved for republication.

RECOMMENDED MOTION: I move that we recommend that the Commission withdraw the previously published proposed amendments, and approve for republication the revised proposed amendments to **7 TAC Section 91.502.**

<p>The Credit Union Commission (the Commission) withdraws the proposed amendments to <*>91.502 concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, as previously published in the March 7, 2014 issue of the <eti>Texas Register<et> (39 TexReg 1590). In its place, the Commission proposes new amendments to the rule to address unofficial comments received on the prior proposed amendments. The amendments clarify that meeting fees which are not excessive may be paid to directors, honorary directors, advisory directors, and committee members. The amendments require annual disclosure of fees to the membership. The amendment grants enforcement authority to the Credit Union Department to limit or prohibit meeting fees.

<p>The amendments are withdrawn, modified, and proposed for republication in response to unofficial comments received on the earlier proposal, as well as to ensure that director fees are appropriate for the institution and transparent to the members.

<p>Stacey McLarty, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

<p>Ms. McLarty has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

<p>Written comments on the proposal must be submitted within 30 days after its publication in the <eti>Texas Register<et> to Stacey McLarty, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

<p> The amendments are proposed under the provision of the Texas Finance Code, <*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code <*>122.062, which limits the compensation a director may receive for services.

<p>The specific section affected by the proposed amended rule is Texas Finance Code, <*>122.062.

<*>91.502. Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.

(a) Expense reimbursement. A credit union may reimburse out-of-pocket travel and related expenses that are reasonable and appropriate for the business activity undertaken. A credit union shall adopt a written board policy to administer and control travel expenses paid or incurred in connection with directors or committee members carrying out official credit union business.

(b) Payment of fees. Subject to the provisions of this rule, a credit union may pay a reasonable meeting fee to any of its directors, honorary directors, advisory directors,(hereafter referred to as directors) or~~Directors and~~ committee members ~~may be paid reasonable fees, in accordance with written board policy,~~ for attending duly called meetings at which~~for conducting~~ appropriate credit union business is conducted. Any credit union electing to pay any type of meeting fee shall annually disclose to the membership the fees paid in the prior calendar year and scheduled to be paid in the current calendar year. This disclosure may be provided to the members as part of the credit union's annual report as prescribed in §91.310 of this title (relating to annual report to membership). A credit union, however, may not pay any meeting fees to a director or committee member if the credit union is operating under a Net Worth Restoration Plan; or an order issued under Finance Code §122.257 or §122.258.

(c) Enforcement Authority; Prohibition. The commissioner may prohibit or otherwise limit or restrict the payment of meeting fees to directors or committee members if, in the opinion of the commissioner, the credit union has paid, is paying, or is about to pay meeting fees that are excessive as defined in §91.502(f).~~Advance Notice of Payment of Fees. A credit union shall provide written notice to the Department of its intent to pay or modify director or committee member meeting fees at least 30 days prior to commencing the new or modified program. The written notice shall include a copy of the board policy, the proposed or revised fee schedule, and a description of the anticipated cost and the credit union's ability to absorb the increase in operating costs. The credit union shall provide any additional information requested by the commissioner~~.

(d) Use of credit union equipment. A credit union may provide personal computers, access to electronic mail, and other electronic conveniences to directors during their terms of office provided:

(1) the board of directors determines that the equipment and the electronic means are necessary and appropriate for the directors to fulfill their duties and responsibilities;

(2) the board of directors develops and maintains written policies and procedures regarding this matter; and

(3) the arrangement ceases immediately upon the person's leaving office.

(e) Insurance. A credit union may, in accordance with written board policy, provide health, life, accident, liability, or similar personal insurance protection for directors and committee members. The kind and amount of these insurance protections must be reasonable given the credit union's size, financial condition, and the duties of the director or committee member. The insurance protection must cease upon the director or committee member's leaving office, without providing residual benefits beyond those earned during the individual's term on the board or committee.

(f) Review by board. A credit union shall implement and maintain appropriate controls and other safeguards to prevent the payment of fees or expenses that are excessive or that could lead to material financial loss to the institution. At least annually, the board, in good faith, shall

review the director/committee member fees and director/committee member-related expenses incurred, paid or reimbursed by the credit union and determine whether its policy continues to be in the best interest of the credit union. The Board's review shall be included as part of the minutes of the meeting at which the policy and the fees and expenses were studied. Fees and expenses shall be considered excessive when amounts paid are disproportionate to the services performed by a director or committee member, or unreasonable considering the financial condition of the institution and similar practices at credit unions of a comparable asset size, geographic location, and/or operational complexity.

(g) Guest travel. A credit union's board may authorize the payment of travel expenses that are reasonable in relation to the credit union's financial condition and resources for one guest accompanying a director or committee member to an approved conference or educational program. The payment will not be considered compensation for purposes of Finance Code §122.062 if:

(1) it is determined by the board to be necessary or appropriate in order to carry out the official business of the credit union; and

(2) it is in accordance with written board policies and procedures.

D

NEW BUSINESS

The Committee will discuss and possibly vote on potential recommendations to the Credit Union Commission concerning the following items:

a. Readopt 7 TAC Sections 91.701 (Lending Powers), 91.703 (Interest Rates), 91.705 (Home Improvement Loans), 91.706 (Home Equity Loans), 91.707 (Reverse Mortgages), 91.708 (Real Estate Appraisals or Evaluations), 91.709 (Member Business Loans), 91.710 (Overdraft Protection), 91.711 (Purchase and Sale of Member Loans), 91.712 (Plastic Cards), 91.713 (Indirect Lending), 91.714 (Leasing), 91.715 (Exceptions to the General Lending Policies), 91.716 (Prohibited Fees), 91.717 (More Stringent Restrictions), 91.718 (Charging Off or Setting Up Reserves), 91.719 (Loans to Officials and Senior Management Employees), and 91.720 (Small-Dollar, Short-Term Credit).

b. Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.704 Concerning Real Estate Lending.

c. Approve for Publication and Comment the Proposed Amendments to 7 TAC Sections 153.1 (Definitions), 153.5 (Three Percent Fee Limitation: Section 50(a)(6a)(E)), 153.15 (Location of Closing: Section 50(a)(6)(N), and 153.51 (Consumer Disclosure: Section 50(g)).

d. Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.209 Concerning Call Reports and Other Information Requests

RECOMMENDED ACTION: The Department requests that the Committee take action as indicated on the documents contained on ***Tab D.***

MANDATORY RULE REVIEW

D. (a) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Sections 91.701 (Lending Powers), 91.703 (Interest Rates), 91.705 (Home Improvement Loans), 91.706 (Home Equity Loans), 91.707 (Reverse Mortgages), 91.708 (Real Estate Appraisals or Evaluations), 91.709 (Member Business Loans), 91.710 (Overdraft Protection), 91.711 (Purchase and Sale of Member Loans), 91.712 (Plastic Cards), 91.713 (Indirect Lending), 91.714 (Leasing), 91.715 (Exceptions to the General Lending Policies), 91.716 (Prohibited Fees), 91.717 (More Stringent Restrictions), 91.718 (Charging Off or Setting Up Reserves), 91.719 (Loans to Officials and Senior Management Employees), and 91.720 (Small-Dollar, Short-Term Credit).

BACKGROUND: Section 2001.39, Government Code, requires that a state agency review and consider for readoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its June 2012 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed Chapter 91, Subchapter G and is recommending that no changes be made to **7 TAC Sections 91.701, 91.703, 91.705, 91.706, 91.707, 91.708, 91.709, 91.710, 91.711, 91.712, 91.713, 91.714, 91.715, 91.716, 91.717, 91.718, 91.719, and 91.720.**

Notice of review and a request for comments on the rules in this chapter was published in the April 14, 2014 issue of the *Texas Register*. No comments were received regarding the review. The Department believes that the reasons for adopting the noted rules continue to exist.

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission readopt the noted rules.

RECOMMENDED MOTION: I move that we recommend that the Commission find that the reasons for adopting **7 TAC Sections 91.701, 91.703, 91.705, 91.706, 91.707, 91.708, 91.709, 91.710, 91.711, 91.712, 91.713, 91.714, 91.715, 91.716, 91.717, 91.718, 91.719, and 91.720** continue to exist and that the rules be readopted without change.

<p>The Credit Union Commission (Commission) has completed its review of Texas Administrative Code Title 7, <**> 91.701 (Lending Powers), §91.703 (Interest Rates), 91.705 (Home Improvement Loans), 91.706 (Home Equity Loans), §91.707 (Reverse Mortgages), 91.708 (Real Estate Appraisals or Evaluations); 91.709 (Member Business Loans), 91.710 (Overdraft Protection), 91.711 (Purchase and Sale of Member Loans), 91.712 (Plastic Cards), 91.713 (Indirect Lending), 91.714 (Leasing), 91.715 (Exceptions to the General Lending Policies), 91.716 (Prohibited Fees), 91.717 (More Stringent Restrictions), §91.718 (Charging Off or Setting Up Reserves), 91.719 (Loans to Officials and Senior Management Employees) and 91 91.720 (Small-Dollar, Short-Term Credit), as published in the April 18, 2014 issue of the <eti>Texas Register<et> (39 TexReg 3261). The Commission proposes to readopt these rules.

<p>The rules were reviewed as a result of the Credit Union Department (Department)'s general rule review.

<p>This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to readopt.

<p>The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting <**> 91.701, §91.703, 91.705, 91.706, §91.707, 91.708; 91.709, 91.710, 91.711, 91.712, 91.713, 91.714, 91.715, 91.716, 91.717, §91.718, 91.719 and 91.720 continue to exist, and readopts these rules without changes pursuant to the requirements of Government Code, <*>2001.039.

Subchapter G. Lending Powers

§91.701. Lending Powers.

(a) Authorization. A credit union may originate, invest in, sell, purchase, service, or participate in loans or otherwise extend credit in accordance with the Act, these Rules, and other applicable law.

(b) Written Policies. Before engaging in any lending activity, each credit union shall establish written lending policies that set prudent credit underwriting and documentation standards for each specific type of lending activity. The lending policies shall contain a general outline of the manner in which loans are made, serviced, and collected. In addition the policies must:

(1) Be consistent with safe and sound credit union practices;

(2) Be appropriate to the size and financial condition of the credit union and the nature and scope of its operations;

(3) Be compatible with the size and expertise of the credit union's lending staff;

(4) Be compliant with all related laws and regulations;

(5) Be reviewed and approved by the credit union's board of directors at inception and annually, thereafter;

(6) Address loan portfolio diversification standards to avoid undue concentrations of risk;

(7) Address loan documentation and underwriting standards that are clear and measurable;

(8) Address loan administration procedures for monitoring the loss exposure from the loan portfolio;

(9) Address loan pricing guidelines to ensure that the rate of return is consistent with the risk from the lending activity; and

(10) State the lending authority delegated to any individuals or committees by the board of directors.

(c) Loan Documentation. The lending policies shall include loan documentation practices that:

(1) Enable the credit union to make an informed lending decision and to assess risk, as necessary, on an ongoing basis;

(2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; and

(3) Ensure that any claim against a member is legally enforceable.

(d) Credit Underwriting. A credit union shall establish and maintain prudent credit underwriting practices that:

(1) Are commensurate with the types of loans the credit union will make and consider the terms and conditions under which they will be made;

(2) Consider the nature of the markets in which loans will be made;

(3) Provide for consideration of the member's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the member's character and willingness to repay as agreed;

(4) Take adequate account of concentration of credit risk; and

(5) Are appropriate to the size of the credit union and the nature and scope of its activities.

(e) Loan Maturity Limit. Except when a higher maturity date is provided for elsewhere in this chapter, the maturity of any loan or extension of credit to a member may not exceed 15

years. Minimum payments, on a line of credit balance must be sufficient to amortize the outstanding balance over a reasonable period of time and not cause negative amortization.

(f) Liquidity. In addition to establishing controls for credit risks, credit unions shall establish procedures and guidelines to monitor and limit the total volume of loans outstanding, to ensure adequate liquidity. In setting such guidelines, the credit union shall consider various factors such as credit demand, the volatility of shares and deposits, and availability of alternative funding sources.

(g) Waivers. The commissioner in the exercise of discretion may grant a waiver in writing of any lending requirement described in this chapter. A decision to deny a waiver, however, is not subject to appeal. A waiver request must contain the following:

(1) The requirement to be waived, the higher limit or the ratio sought;

(2) An explanation of the need for the waiver or to raise the limit or ratio; and

(3) Documentation supporting the credit union's ability to manage the additional risk from this activity.

§91.703. Interest Rates.

(a) Loans made by each credit union shall bear interest at a rate or rates as may be determined by the credit union's board of directors. A board may delegate all or part of its power to determine the interest rates on any lending transactions. The board may also authorize a refund of interest on loans under the conditions it may prescribe.

(b) A loan may provide for variable interest rates, so long as the factor or index governing the extent of the variation is not under the control of the credit union and can be readily ascertained from sources available to the public or any other index approved in writing by the commissioner which is not available to the public.

§91.705. Home Improvement Loans.

In addition to the requirements of this chapter, all loans in which the proceeds are used to construct new improvements or renovate existing improvements on a homestead property must also comply with the requirements of Section 50(a)(5), Article XVI, Texas Constitution.

§91.706. Home Equity Loans.

For any loan secured by an encumbrance against the equity in a homestead property, the terms and conditions set forth in this chapter and in Section 50, Article XVI, Texas Constitution will apply. If there is an irreconcilable conflict between a constitutional provision and the provision of this section, the constitutional requirement shall prevail.

§91.707. Reverse Mortgages.

A credit union may offer reverse mortgages to its members under the terms and conditions set forth in Section 50, Article XVI, Texas Constitution and other applicable law. In the event of an irreconcilable conflict between any specific requirement contained in this section and a constitutional provision, the constitutional requirement shall prevail.

§91.708. Real Estate Appraisals or Evaluations.

(a) Policies and Procedures. A credit union's board of directors is responsible for reviewing and adopting policies and procedures that establish and maintain an effective, independent real estate appraisal and evaluation program. A credit union's selection criteria for individuals who may perform appraisals or evaluations must provide for the independence of the individual performing the evaluation. That is, the individual has neither a direct nor indirect interest, financial or otherwise, in the property or transaction. The individual selected must also be competent to perform the assignment based upon the individual's qualifications, experience, and educational background. An individual may be an employee of a credit union if the individual qualifies under the conditions and requirements contained in Part 722 of the National Credit Union Administration Rules and Regulations.

(b) Loans Over $250,000. For real estate loans in which the amount of the loan or extension of credit exceeds $250,000, the credit union shall obtain a professional appraisal report by a state certified or licensed appraiser. The appraisal report shall be in writing and conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation, in Washington, D.C.

(c) Loans $250,000 or Less. For a real estate loans with an amount of the loan or extension of credit of $250,000 or less, the services of a state certified or licensed appraiser is not necessary; however, the credit union must obtain an appropriate evaluation of real property collateral that is supported by a written estimate of market value either performed by a qualified individual who has demonstrated competency in performing evaluations or from tax appraisal data of a governmental entity.

(d) Right to Require an Appraisal. The commissioner may require an appraisal under this section, at the expense of the credit union, when the commissioner has reasonable cause to believe the value of the collateral is overstated.

(e) Existing Loans. In the case of renewal of a loan where there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of additional funds, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this section.

(f) Other Appraisal Requirements. A credit union shall also comply with applicable real estate appraisal requirements contained within Part 722 of the National Credit Union Administration Rules and Regulations.

§91.709. Member Business Loans.

(a) A member business loan is defined as any loan, line of credit, or letter of credit (including any unfunded commitments), the proceeds of which will be used for a commercial, corporate, business investment property or venture, or agricultural purpose, except that the following shall not be considered a member business loan for the purposes of this rule:

(1) A loan fully secured by a lien on a 1- to 4-family dwelling that is the member's primary residence;

(2) A loan fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;

(3) Loan(s) to a member or associated member which, when the net member business loan balances are added together, are equal to less than $50,000; or

(4) A loan where a federal or state agency or one of its political subdivisions fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full.

(b) This section does not apply to loans made by a credit union to other credit unions and credit union service organizations.

(c) Any interest a credit union obtains in a loan that was made by another lender to the credit union's member is a member business loan, for purposes of this section, to the same extent as if made directly by the credit union to its member.

(d) Any interest a credit union obtains in a nonmember loan, pursuant to §91.805 (relating to loan participation investments) shall be treated the same as a member business loan for purposes of this section, except that the effect of such interest on a credit union's aggregate member business loan limit will be as set forth in subsection (f) of this rule.

(e) A credit union with a net worth ratio greater than 6% may make member business loans subject to the conditions of this section. The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Loans that are exempt from the definition of member business loans are not counted for the purpose of the aggregate loan limit.

(f) If a credit union holds any nonmember loan participation investments that would constitute a member business loan if made to a member, those loans will affect the credit union's aggregate limit on net member business loan balances as follows:

(1) The total of the credit union's net member business loan balances and the nonmember participation investments must not exceed the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets, unless the credit union has first received approval from the commissioner.

(2) To request approval from the commissioner, a credit union must submit a letter application that:

(A) Includes a current copy of the credit union's member business loan policies;

(B) Confirms that the credit union is in compliance with all other aspects of this rule;

(C) States the credit union's proposed limit on the total amount of nonmember loan participation investments that the credit union may acquire if the application is granted; and

(D) Attests that the acquisition of nonmember loan participation investments is not being used, in conjunction with one or more other credit unions, to have the effect of trading member business loans that would otherwise exceed the aggregate limit.

(3) If the commissioner approves the request, the commissioner will promptly forward the request to Region IV of the NCUA for decision under NCUA rules at 12 C.F.R 723.16. The commissioner's approval is not effective until the regional director of the NCUA approves it in accordance with NCUA Rule at 12 C.F.R. 723.16.

(4) The commissioner shall deny a request to exceed the aggregate limit on a credit union's net member business loan balances, or may revoke a previously approved increased aggregate limit, if the commissioner determines that:

(A) the treatment of loan purchases or participations interest will or has resulted in circumvention of the aggregate limit;

(B) the credit union's level of capital is not commensurate with that needed to support the additional risks that will be or has been incurred; or

(C) the performance of the activity by the credit union will or has adversely affected the safety and soundness of the credit union, or poses a material risk to the share insurance fund.

(g) The aggregate amount of net member business loan balances to any one member or group of associated members shall not be more than 15% of the credit union's net worth (less the Allowance for Loan Losses account) or $100,000.00, whichever is higher.

(h) All member business loans must be secured by collateral in accordance with this section, except the following:

(1) a credit card line of credit granted to nonnatural persons that is limited to routine purposes normally made available under such lines of credit; and

(2) a loan made by a credit union under the following conditions:

(A) the aggregate of the unsecured outstanding member business loans to any one member or group of associated members does not exceed the lesser of one hundred thousand dollars or 2.5% of the credit union's net worth;

(B) the aggregate of all unsecured outstanding member business loans does not exceed ten percent of the credit union's net worth; and

(C) the credit union has a net worth of at least seven percent.

(i) The maximum loan-to-value (LTV) ratio for a member business loan may not exceed eighty percent, except when:

(1) the loan is secured by collateral on which the credit union will have a first mortgage lien, and the loan is covered by private mortgage or equivalent type insurance, or insured, guaranteed, or subject to advance commitment to purchase, by any federal or state agency or any political subdivision of this State, but in no case may the LTV ratio exceed ninety-five percent; or

(2) the loan is to purchase a car, van, pickup truck, or sport utility vehicle and is not part of a fleet of vehicles, but the LTV ratio and the term for this type of vehicle loan must be consistent with the depreciation schedule of any vehicle used for a particular type of business.

(j) A credit union that engages in this type of lending shall adopt specific member business loan policies and review them at least annually. In addition to the general lending provisions of this subchapter, the member business loan policies, at a minimum, shall address all of the following areas:

(1) Types of business loans to be made and collateral requirements for each type of loan.

(2) The maximum amount of net member business loan balances relative to the credit union's net worth.

(3) The maximum amount of any given category or type of member business loan relative to the credit union's net worth.

(4) The maximum amount that will be loaned to any one member or group of associated members, subject to subsection (g) of this section.

(5) The qualifications and experience requirements for personnel involved in making and servicing business loans, subject to subsection (k).

(6) A requirement for analysis of the member's initial and ongoing financial capacity to repay the debt.

(7) Documentation sufficient to support each request for an extension of credit or an increase in an existing loan or line of credit, except where the board of directors finds that the required documentation is not reasonably available for a particular type of loan and states the reasons for those findings in the credit union's written policy. At a minimum, the standard documentation must include the following:

(A) A balance sheet;

(B) An income statement;

(C) A cash flow analysis;

(D) Income tax data;

(E) Analysis of operating performance ratios, and comparison with industry averages, when applicable; and

(F) Receipt and the periodic updating of financial statements, income tax data, and other documentation necessary to support the borrower's ongoing repayment ability.

(8) Collateral requirements which include all of the following:

(A) Loan-to-value (LTV) ratios;

(B) Appraisal, determination of ownership, and insurance requirements;

(C) Environment impact assessment, when applicable; and

(D) Steps to be taken to secure various types of collateral.

(9) Identification, by position, of the officials and senior management employees who are prohibited from receiving member business loans which, at a minimum, shall include the credit union's chief executive officer, any assistant chief executive officers, the chief financial officer, and any associated member or immediate family member of such persons.

(10) Guidelines for purchase and sale of member business loans and loan participations, if the credit union engages in that activity.

(k) The board of directors must use the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in. The experience must provide the credit union sufficient expertise given the complexity and risk exposure of the loans in which the credit union intends to engage. A credit union can meet the experience requirement through various approaches, including the services of a credit union service organization (CUSO), an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

(l) Any third party used by a credit union to meet the requirements of subsection (k) must be independent from the transaction and is prohibited from having a participation in the loan or an interest in the collateral securing the loan that the third party is responsible for reviewing, with the following exceptions:

(1) the third party may provide a service to the credit union related to the transaction, such as loan servicing;

(2) the third party may provide the requisite experience to the credit union and purchase a participation interest in a loan originated by the credit union that the third party reviewed; or

(3) a credit union may use the services of a CUSO that otherwise meets the requirements of subsection (k) even though the CUSO is not independent from the transaction, provided the credit union has a controlling financial interest in the CUSO as determined under generally accepted accounting principles.

(m) Loans granted for the construction or development of commercial or residential property are subject to the following additional requirements:

(1) The aggregate of the net member business loan balances for all construction and development loans must not exceed 15% of the credit union's net worth. To determine the aggregate balances for purposes of this limitation, a credit union may exclude any loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase the property and may also exclude a loan to finance the construction of one single-family residence per member-borrower or group of associated member-borrowers, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase the property;

(2) The member borrower on such loans must have a minimum of 25% equity interest in the project being financed, the value of which is determined by the market value of the project at the time the loan is made, except that this requirement will not apply in the case of a loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase the property and in the case of one loan to a member-borrower or group of associated member-borrowers to finance the construction of a single-family residence,

irrespective of the existence of a contractual commitment from a prospective homeowner to purchase the property. Instead the collateral requirements of subsection (i) will apply; and

(3) The funds may be released only after on-site, written inspections by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation.

(n) The commissioner, consistent with safety and soundness principles, may grant a waiver of a requirement imposed by this Section only in the following areas:

(1) Aggregate construction or development loan limits under subsection (m);

(2) Minimum borrower equity requirements for construction or development loans under subsection (m);

(3) LTV ratio requirements for member business loans under subsection (i);

(4) Maximum aggregate net member business loan balances to any one member or group of associated members under subsection (g); and

(5) Maximum unsecured member business loan limits under subsection (h).

(o) A waiver request authorized under subsection (n) must contain the following:

(1) A copy of the credit union's member business lending policy;

(2) The higher limit or ratio sought;

(3) An explanation of the need to raise the limit or ratio;

(4) Documentation supporting the credit union's ability to manage this activity; and

(5) An analysis of the credit union's prior experience making member business loans, including as a minimum:

(A) the history of loan losses and loan delinquency;

(B) volume and cyclical or seasonal patterns;

(C) diversification;

(D) concentrations of credit to one borrower or group of associated borrowers in excess of 15 percent of net worth;

(E) underwriting standards and practices;

(F) types of loans grouped by purpose and collateral; and

(G) the qualifications of personnel responsible for underwriting and administering member business loans.

(p) In determining action on a waiver request made under subsection (n), the commissioner will consider the credit union's:

(1) Condition and management, including compliance with regulatory net worth requirements. If significant weaknesses exist in these financial and managerial factors, the waiver normally will be denied.

(2) Adequacy of policies, practices, and procedures. Correction of any deficiencies may be included as conditions, as appropriate, if an approval decision is made.

(3) Record of performance. If the member business loan record is less than satisfactory or otherwise problematic, the waiver normally will be denied.

(4) Elevated level of risk. If the level of risk posses safety and soundness problems or material risks to the insurance fund, the waiver normally will be denied.

(q) The commissioner will provide the NCUA regional director with a copy of each waiver request made under subsection (n). The regional director will be consulted on all waiver requests. The regional director will provide NCUA's views within 30 calendar days, or NCUA will be deemed to have concurred with the commissioner's decision. The thirty days will begin to run once the commissioner and the regional director agree that the waiver request is complete.

(r) A credit union may not grant a member business loan if any additional income received by the credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(s) A credit union may not grant a member business loan to a compensated director unless the board of directors approves granting the loan and the compensated director is recused from the decision making process.

(t) If a credit union makes a member business loan as part of a Small Business Administration guaranteed loan program with loan requirements that are less restrictive than those required by Commission Rules, then the credit union may follow the loan requirements of the relevant Small Business Administration guaranteed loan program.

(u) For the purposes of this section, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Associated member – means any member with a common ownership, investment, or other pecuniary interest in the business or agricultural endeavor for which the business loan is being made.

(2) Construction or development loan – a financing arrangement for acquiring property or rights to property, including land or structures, with the intent of converting the property into income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar use.

(3) Loan-to-value ratio – the aggregate amount of all sums borrowed including outstanding balances plus any unfunded commitment or line of credit from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.

(4) Net Member Business Loan Balance – means the outstanding loan balance plus any unfunded commitments, reduced by any portion of the loan that is secured by shares or deposits in the credit union, or by shares or deposits in other financial institutions, or by a lien in the member's primary residence, or insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state, or sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.

(5) Net Worth – means retained earnings as defined under Section 702.2 of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 702).

§91.710. Overdraft Protection.

(a) Written Policy. A credit union may advance money to a member to cover an account deficit without having a credit application from the borrower on file if the credit union has written policies and procedures adequate to address the credit, operational, and other risks associated with this type of program. The policy must:

1. Set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses;
2. Establish a time limit no later than 60 calendar days from the date first overdrawn to charge off the overdraft balance if the member does not repay the overdraft balance, or does not obtain an approved loan from the credit union;
3. Limit the dollar amount of overdrafts the credit union will honor per account;
4. Institute prudent practices related to suspension of overdraft protection services; and
5. Establish the fee, if any, the credit union will charge members for honoring overdrafts.

(b) Safety and Soundness Requirements. A credit union must manage the risks associated with an overdraft protection program in accordance with safe and sound credit union principles. Accordingly, a credit union must establish and maintain effective risk management and control processes over its program. Such processes include appropriate recognition, treatment, and financial reporting, in accordance with generally accepted accounting principles, of income, expenses, assets, liabilities, and all expected and unexpected losses associated with the program. A credit union also

shall assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its overdraft protection program.

(c) Communications with Member. A credit union shall carefully review its overdraft protection program to ensure that marketing and other communications concerning the program do not mislead members to believe that the program is a traditional line of credit or that payment of overdrafts is guaranteed. In addition, a credit union shall take reasonable precautions to make sure members are not misled about the correct amount of their account balance, or the costs or scope of the overdraft protection offered, and that it does not encourage irresponsible member financial behavior that potentially may increase risk to the credit union.

(d) Other Requirements. A credit union shall also comply with the overdraft service requirements contained within Part 205 of the Federal Reserve System Rules and Regulations (Regulation E).

§91.711. Purchase and Sale of Member Loans.

(a) Policies. A credit union may sell or purchase all or part of a participation interest in a member loan or pool of member loans in accordance with written policies adopted by the board of directors that address the following matters:

(1) The type of entities to which the credit union is authorized to sell participation interests in member loans;

(2) The types of member loans in which the credit union may purchase or sell a participation interest and the types of participation interests which may be purchased or sold;

(3) The underwriting standards to be applied in the purchase of participation interests in member loans;

(4) Limitations on the aggregate principal amount of participation interest in member loans that the credit union may purchase from a single entity as necessary to diversify risk, and limitations on the aggregate amount the credit union may purchase from all entities;

(5) Provision for the identification and reporting of member loans in which participation interests are sold or purchased; and

(6) Requirements for providing and securing in a timely manner adequate credit and other information needed to make an independent judgment.

(b) Purchase and Sale Agreements. The sale or purchase of a member loan or participation interest must be based on a written agreement between the parties. Agreements to purchase or sell a member loan or a participation interest shall, at a minimum:

(1) Identify the particular member loan(s) to be covered by the agreement;

(2) Provide for the transfer of credit and other borrower information on a timely and continuing basis;

(3) Provide for sharing, dividing, or assigning collateral;

(4) Identify the nature of the participation interest(s) sold or purchased;

(5) Set forth the rights and obligations of the parties and the terms and conditions of the sale; and

(6) Contain any terms necessary for the appropriate administration of the member loan and the protection of the participation interests of the credit union.

(c) Member Loan Servicing. A credit union may sell to or purchase from any participant the servicing of any member loan in which it owns a participation interest. If a party other than the credit union will be servicing the member loan(s), the credit union shall ensure that all contracts require the servicer to administer the member loan(s) in accordance with prudent industry standards, and provide for a possible change of the servicer if performance is inadequate.

(d) Definition. For purposes of this section, a member loan means a loan or extension of credit where the borrower(s) is a member of the credit union or a member of another participating credit union.
(e) Independent Credit Judgment. A credit union that purchases a participation interest in a member loan has the responsibility of conducting member loan underwriting procedures on the member loan to determine that it complies with the policies of the credit union and meets the credit union's credit standards. The credit union shall make a judgment on the creditworthiness of the borrower that is independent of the originating lender and any intermediary seller prior to the purchase of the participation interest and prior to any servicing action that alters the terms of the original agreement. This credit judgment may not be delegated to any person that is not an employee or independent agent of the credit union. A credit union that purchases a participation interest in a member loan may use information, such as appraisals or collateral inspections, furnished by the originating lender, or any intermediary seller; however, the purchasing credit union shall independently evaluate such information when exercising its independent credit judgment. The independent credit judgment shall be documented by a credit analysis that considers the underwriting, documentation, and compliance standards that would be required by a prudent lender and shall include an evaluation of the capacity and reliability of the servicer.
(f) Other Requirements. A credit union purchasing a participation interest in a member loan from a lender that is not a credit union insured by the National Credit Union Share Insurance Fund, must also comply with applicable requirements contained within Part 741 of the National Credit Union Administration Rules and Regulations.
(g) Sales with Recourse. When a member loan or participation interest is sold with recourse, it shall be considered, to the extent of the recourse, an extension of credit by the purchaser to the seller, as well as an extension of credit from the seller to the borrower(s).

§91.712. Plastic Cards.

(a) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
(1) Card Activation – process of sending new plastic cards from the issuer to the legitimate cardholder in an "inactive" mode. Once the legitimate cardholder receives the card, they must call the issuer/processor and go through a member verification process before the card is "activated".
(2) Card Security Code – a set of unique numbers encoded on the magnetic strip of plastic cards used to combat counterfeit fraud.
(3) Neural Network – a computer program that monitors usage patterns of an account and typical fraud patterns. The program analyzes activity to determine fraud risk scores to detect potentially fraudulent activity.
(4) Plastic Cards – includes credit cards, debit cards, automated teller machine (ATM) or specific network cards; and predetermined stored value and smart cards with micro-processor chips.
(b) Credit cards. A credit union may issue credit cards in accordance with the credit union's written policies, which shall include at a minimum:
(1) Credit policies to set individual limits for credit card accounts:
(2) A process for reviewing each member's payment and/or credit history periodically for the purpose of determining risk; and
(3) The credit underwriting standards for each type of card program offered.
(c) Program Review.

(1) A credit union shall review, on at least an annual basis, its plastic card program with particular emphasis on:

(A) The amount of losses caused by theft and fraud;

(B) The loss prevention measures (and their adequacy) currently employed by the credit union;

(C) The availability and possible implementation of other loss prevention measures such as card activation, card security codes, neural networks, and other evolving technology; and

(D) A cost benefit analysis of supplemental insurance coverage for theft and fraud related losses.

(2) The review shall be documented in writing, with any approved changes to the plastic card program being entered into the minutes of the board meeting.

§91.713. Indirect Lending.

(a) Indirect Lending Program. Credit unions may implement a program of indirect financing of motor vehicles and other tangible personal property. As used in this chapter, an indirect financing is the credit union's purchase of a member's retail installment contract that is originated by a seller to finance the purchase of the motor vehicle or other property.

(b) Contracts Treated as a Loan. For the purposes of this chapter, a retail installment contract purchased under this authority may be treated as a loan on the books and records of the credit union and is subject to the same limitations and restrictions imposed upon loan transactions. As with other lending, the credit union is responsible for making the final underwriting decision. The seller may initially determine whether the prospective buyer is a member or eligible for membership in the credit union, but the final determination of membership eligibility is the credit union's responsibility.

(c) Authorization. Credit unions may purchase or hold retail installment contracts when authorized by applicable law. The retail installment contract must provide for a rate or amount of time price differential that does not exceed a rate or amount authorized by applicable law.

(d) Written Policies. The board of directors shall establish, implement, and maintain prudent and reasonable written policies that are appropriate for the size and complexity of the credit union's indirect lending program. The board must also ensure that the credit union has sufficient staff with the expertise to purchase, service, and monitor the program and the contract portfolio consistent with safe and sound credit union practices. The policies must be specific and detailed enough to foster prudent and compliant credit practices.

(e) Third Party Providers. A credit union may rely on services provided by third parties to support its indirect lending activities. The board of directors must ensure that the credit union exercises appropriate due diligence before entering into third party arrangements, and maintains effective oversight and control throughout the arrangement. This oversight and control should include a periodic review of each material seller's retail installment contract statistics to ensure compliance with credit union credit criteria and to avoid undue concentrations of risk.

(f) Subprime Indirect Lending. If a credit union conducts a program that includes subprime indirect lending, it must perform comprehensive due diligence before engaging in and during that type of activity. At a minimum, due diligence shall focus on understanding the higher levels of credit, compliance, reputation, and other risks involved, plus the likelihood that origination, servicing, collections, operating, and capital costs will increase. The strategic decision to engage in subprime indirect lending must also be supported by a sound business plan that establishes measurable financial objectives as well as limitations on growth, volume, and concentrations. For the purposes of this section, "subprime indirect lending" refers to programs that target

borrowers with weakened credit histories typically characterized by payment delinquencies, previous charge-offs, judgments, or bankruptcies. Such programs may also target borrowers with questionable repayment capacity evidenced by low credit scores or high debt-burden ratios.

§91.714. Leasing.

(a) Definitions. For the purposes of this section:

(1) The term net lease means a lease under which the credit union will not, directly or indirectly, provide or be obligated to provide for:

(A) the servicing, repair or maintenance of leased property during the lease term;

(B) the purchasing of parts and accessories for the leased property, except that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of subsection (c)(2)(A) of this section;

(C) the loan of replacement or substitute property while the leased property is being serviced;

(D) the purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(E) the renewal of any license, registration, or filing for the property unless such action by the credit union is necessary to protect its interest as an owner or financier of the property.

(2) The term full-payout lease means a lease transaction in which any unguaranteed portion of the estimated residual value relied on by the credit union to yield the return of its full investment in the lease property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25% of the original cost of the property to the lessor. In general, a lease will qualify as a full payout lease if the scheduled payments provide at least 75% of the principal and interest payments that a lessor would receive if the finance lease were structured as a market-rate loan.

(3) The term realization of investment means that a credit union that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

(A) Rentals; and

(B) The estimated residual value of the property at the expiration of the term of the lease.

(b) Permissible Activities. Subject to the limitations of this section, a credit union may engage in leasing activities. These activities include becoming the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, obtaining an assignment of a lessor's interest in a lease of such property, and incurring obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(c) Finance Leasing.

(1) A credit union may conduct leasing activities that are functional equivalent of loans made under those leases. Such financing leases are subject to the same restrictions that would be applicable to a loan.

(2) To qualify as the functional equivalent of a loan:

(A) The lease must be a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease;

(B) The portion of the estimated residual value of the property relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment

plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property; and

(C) At the termination of the financing lease, either by expiration or default, property acquired must be liquidated or released on a net basis as soon as practicable. Any property held in anticipation of releasing must be reevaluated and recorded at the lower of fair market value or the value carried on the credit union's books.

(d) General Leasing. A credit union may invest in tangible personal property, including vehicles, manufactured homes, equipment, or furniture, for the purpose of leasing that property. In contrast to financing leases, lease investments made under this authority need not be the functional equivalent of loans.

(e) Leasing Salvage Powers. If a credit union believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, it may:

(1) As the owner and lessor, take reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) Include any provision in a lease, or make any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (1) and (2) of this subsection.

(f) Written Policies. A credit union engaged in lease underwriting must adopt written policies and develop procedures that reflect lease practices that control risk and comply with applicable laws. Any leasing activity must be consistent with the lending policies and underwriting requirements in §91.701 of this title (relating to Lending Powers). Any credit union engaged in making or buying leases also must adopt written polices and procedures that address the additional risks associated with leasing.

(g) Insurance Requirements. A credit union must maintain a contingent liability insurance policy with an endorsement for leasing or be named as the co-insured if the credit union does not own the leased property. Contingent liability insurance protects the credit union if it is sued as the owner of the leased property. A credit union must use an insurance company with a nationally recognized industry rating of at least a B+. Credit union members must still carry the normal liability and property insurance on the leased property and the credit union must be named as an additional insured on the liability insurance policy and as the loss payee on the property insurance policy.

(h) Holding Period. At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, a credit union shall either liquidate the off-lease property or re-lease it under a conforming lease as soon as practicable. The credit union must value off-lease property at the lower of current fair market value or book value promptly after the property becomes off-lease property.

§91.715. Exceptions to the General Lending Policies.

(a) Credit unions may provide for the consideration of loan requests from creditworthy members whose credit needs do not fit within the credit union's general lending policies. A credit union may provide for prudently underwritten exceptions to its lending policies. However, the Board is responsible for establishing written standards for the review and approval of exception loans.

(b) Each credit union establishing exceptions to its general lending policies shall establish an appropriate internal process for the review and approval of loans that do not conform to its own internal policy standards. The approval of any such loan shall also be supported by a written justification that clearly sets forth all of the relevant credit factors that support the underwriting decision. The justification and approval documents for such loans will be maintained as a part of the permanent loan file. Each credit union shall monitor compliance with its lending policies and individually report exception loans of a significant size to its board of directors.
(c) Exception loans shall be identified in the credit union's records and their aggregate amount reported at least annually to the board of directors. The aggregate amount of all such loans shall not exceed 10 percent of the credit union's net worth.

§91.716. Prohibited Fees.

A credit union shall not make any loan or extend any credit if, either directly or indirectly, any commission, fee, or other compensation from any person or entity other than the credit union is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or extension of credit.

§91.717. More Stringent Restrictions.

The Commissioner may impose more stringent restrictions on a credit union's loans if the Commissioner determines that such restrictions are necessary to protect the safety and soundness of the credit union.

§91.718. Charging Off or Setting Up Reserves.

(a) The commissioner, after a determination of value in accordance with generally accepted accounting principles, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established.
(b) A credit union's financial statements shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation allowance accounts as may be necessary to present fairly the financial position; and all income and expenses necessary to present fairly the results of operations for the period concerned.
(c) The Board of directors is responsible for ensuring that the credit union has controls in place to consistently determine the allowance for loan and lease losses (ALLL) in accordance with its written polices, generally accepted accounting principles, and relevant supervisory guidance. Policies shall be appropriately tailored to the size and complexity of the credit union and its loan and lease portfolio. As a minimum, a credit union shall develop, maintain, and document the methodology used to determine the amounts of an appropriate ALLL and provisions for loan and lease losses. Adjustments to the ALLL shall be made prior to the end of each calendar quarter in order to accurately reflect the loss exposure on the quarterly call reports.

§91.719. Loans to Officials and Senior Management Employees.

(a) Prohibition on Preferential Rates, Terms, and Conditions. The rates, terms, conditions, and availability of any loan or other extension of credit made to, or endorsed or guaranteed by, a director, senior management employee, member of the credit committee, or an immediate family

member of any such individual shall not be more favorable than the rates, terms, conditions, and availability of comparable loans or credit to other credit union members.

(b) Approval of Governing Board. Before making a loan, extending credit, or becoming contractually liable to make a loan or extend credit to a director, senior management employee, member of the credit committee, or an immediate family member of such individual, the board of directors must approve the transaction if the loan or the extension of credit or aggregate of outstanding loans and extensions of credit to any one person, the person's business interests, and the members of the person's immediate family is greater than 15% of the credit union's net worth. A loan fully secured by shares in the credit union or deposits in other financial institutions shall not be subject to, or included in, the aggregate amounts included in this section.

(c) Definition. For purposes of this section, senior management employees shall include the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above), and the chief financial officer; and immediate family members shall include a person's spouse or any other person living in the same household.

(d) Aggregate Limit on Insider Loans. The aggregate of all outstanding loans or extensions of credit made to, or endorsed or guaranteed by, all directors, credit committee members, senior management employees, and immediate family members of all such individuals, shall not exceed 20% of the credit union's total assets. The requirements described in this subsection shall apply unless waived in writing by the commissioner for good cause shown.

(e) Reports to Governing Board. At least annually, the president shall make a report to the board of directors on the outstanding indebtedness of all directors, credit committee members, senior management employees, and immediate family members of such individuals. The Board's review shall be included as part of the minutes of the meeting at which the report was presented. The report required by this section shall include the following information:

(1) The amount of each indebtedness; and

(2) A description of the terms and conditions (including the interest rate, the original amount and date, maturity date, payment terms, security, if any, and any other unusual term or condition) of each extension of credit.

(f) Governing Board Option. At the discretion of the Board, the reporting requirement of subsection (e) of this section may be waived for any individual if the aggregate amount of all outstanding loans and extensions of credit to that person, the person's business interests, and the members of the person's immediate family do not exceed the greater of $25,000 or one-quarter of one percent (.25%) of the credit union's net worth.

§91.720. Small-Dollar, Short-Term Credit.

(a) General. Credit unions are encouraged to offer small-dollar credit products that are affordable, yet safe and sound, and consistent with applicable laws. The goal in offering these small-dollar credit products should be to help members avoid, or transition away from, reliance on high-cost debt. To accomplish this goal, credit unions should offer products with reasonable interest rates, low fees, and payments that reduce the principal balance of the loan or extension of credit.

(b) Definition. For purposes of this section, small-dollar, short term credit product is defined as a low denomination loan or extension of credit having a term of 6 months or less, where the amount financed does not exceed $1,100. Each credit union is responsible for establishing appropriate dollar limits and terms based upon its size and sophistication of operations, and its net worth.

(c) Limitation. Accessibility and expediency are important factors for many members with emergency or other short-term needs. Therefore, small-dollar credit products must balance the

need for quick availability of funds with the fundamentals of responsible lending. Sound underwriting criteria should focus on a member's history with the credit union and ability to repay a loan within an acceptable timeframe. Given the small dollar amounts of each individual credit request, documenting the member's ability to repay can be streamlined and may need to include only basic information, such as proof of recurring income. The aggregate total of streamlined underwritten small-dollar credit products outstanding, however, shall not exceed 20% of the credit union's net worth.

(d) Fees. A credit union may require a member to pay reasonable expenses and fees incurred in connection with making or closing a loan. With respect to expenses and fees being assessed on small-dollar, short–term credit products, the expenses and fees are presumed to be reasonable if the aggregate total is $20 or less. In addition, if the credit union refinances a small-dollar, short-term credit product, it may charge such expenses and fees only once in a 180-day period. Credit unions may also charge a late fee as permitted by Finance Code §4124.153.

(e) Payments. Credit unions should structure payment programs in a manner that reduces the principal owed. For closed-end products, loans should be structured to provide for affordable and amortizing payments. Lines of credit should require minimum payments that pay off principal. Excessive renewals or the prolonged failure to reduce the outstanding balance are signs that the product is not meeting the member's credit needs and will be considered an unsound practice.

(f) Required Savings. Credit unions may structure small-dollar credit programs to include a savings component. The funds in this account may also serve as a pledge against the loan or extension of credit.

C. (b) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.704 Concerning Real Estate Lending.

BACKGROUND: Section 2001.39, Government Code, requires that a state agency review and consider for readoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its June 2012 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC Section 91.704 and is recommending that changes be made.

The amendments clarify maturity limits for certain real estate loans.

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission approve the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.704 concerning real estate lending.

<p>The Credit Union Commission (the Commission) proposes amendments to <*>91.704 concerning Real Estate Lending. The amendments clarify maturity limits for certain real estate loans.

<p>The amendments are proposed as a result of the Texas Credit Union Department's (Department) general rule review.

<p>Stacey McLarty, General Counsel, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

<p>Ms. McLarty has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

<p>Written comments on the proposal must be submitted within 30 days after its publication in the <eti>Texas Register<et> to Stacey McLarty, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

<p>The amendments are proposed under Texas Finance Code, <*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code <*>123.201which authorizes lending activities for credit unions.

<p>The specific section affected by the proposed amendments is Texas Finance Code, <*>123.201.

<*>91.704. Real Estate Lending.

(a) Definitions. For the purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.
(1) First lien means any mortgage that takes priority over any other lien or encumbrance on the same property and that must be satisfied before other liens or encumbrances may share in proceeds from the property's sale.
(2) Home loan means a loan that is:
(A) made to one or more individuals for personal, family, or household purposes; and
(B) secured in whole or part by:
(i) a manufactured home, as defined by Finance Code <*>347.002, used or to be used as the borrower's principal residence; or
(ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower's principal residence.
(3) Improved residential real estate means residential real estate containing offsite improvements, such as access to streets, curbs, and utility connections, sufficient to make the property ready for residential construction, and real estate in the process of being improved by a building.
(4) Other acceptable collateral means any collateral in which the credit union has a perfected security interest, that has a quantifiable value, and is accepted by the credit union in accordance with safe and sound lending practices.
(5) Owner-occupied means that the owner of the underlying real property occupies a dwelling unit of the real property as a principal residence.
(6) Readily marketable collateral means insured deposits, financial instruments, and bullion in which the credit union has a perfected interest. Financial instruments and bullion must be saleable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market.
(b) Written Policies. Before engaging in any real estate lending, a credit union shall adopt and maintain written policies that are appropriate for the size of the credit union and the nature and scope of its operation. When formulating the real estate lending policy, the credit union should consider both internal and external factors, such as its size and condition, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate laws and rules, and general market conditions. Each policy must be consistent with safe and sound lending practices and establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate. The policies shall, in addition to the general requirements of §91.701(b) of this title (relating to Lending Powers), address the following, as applicable:
(1) Title insurance;
(2) Escrow administration;
(3) Loan payoffs;
(4) Collection and foreclosure; and
(5) Servicing and participation agreements.
(c) Loan to Value Limitations.
(1) The board of directors shall establish its own internal loan-to-value limits for real estate loans based on type of loan. These internal limits, however, shall not exceed the following regulatory limits:
(A) Unimproved land held for investment/speculation--Loan to value limit 60%

(B) Construction and Development: commercial, multifamily, and other nonresidential--Loan to value limit 75%
(C) Interim Construction: owner-occupied residential real estate--Loan to value limit 90%
(D) Owner occupied residential real estate (other than home equity)--Loan to value limit 95%
(E) Other residential real estate such as a second or vacation home--Loan to value limit 90%
(F) Home equity--Loan to value limit 80%
(G) All Other--Loan to value limit 80%
(2) The regulatory loan-to-value limits should be applied to the underlying property that collateralizes the loan. In determining the loan to-value ratio, a credit union shall include the aggregate amount of all sums borrowed, including the outstanding balances, plus any unfunded commitment or line of credit from all sources on an item of collateral, divided by the market value of the collateral used to secure the loan.
(d) Maximum Maturities. Notwithstanding the general 15-year maturity limit on lending transactions to members, credit unions engaged in real estate lending are expected to have loan policies that establish prudent standards for loan structure including tenor and amortization that are within the risk parameters approved by the board of directors and consistent with~~the board of directors shall establish written internal maximum maturities for real estate lending transactions. These maturities should not exceed~~ the following regulatory limits:
(1) Improved residential real estate loans (principal residence~~owner-occupied~~, first lien)--40 years
(2) Improved residential real estate loans (secondary residence~~not owner-occupied~~, first lien)--30 years
(3) Improved residential real estate loans (investment property, first lien)—20 years
~~(3)~~ (4) Interim construction loans--18 months
~~(4)~~ (5) Manufactured home (first lien)--20 years
~~(5)~~ (6) Home equity loans--20 years (second lien)--30 years (first lien)
~~(6)~~ (7) Home improvement loans--20 years
~~(7)~~ (8) A loan secured in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal Government or any agency of the Federal Government, may be made for the maturity specified in the law, regulations or program under which the insurance, guarantee or commitment is provided~~All other loans--15 years~~
(e) Mortgage Fraud Notice. A credit union must provide to each applicant for a home loan a written notice at closing. The notice must be provided on a separate document, be in at least 14-point type, and have the following or substantially similar language: "Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of §32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed $10,000. "I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan."I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing." On receipt of the notice, the applicant shall verify the information and execute the notice. A credit union must keep the signed notice on file with the records required under §91.701 of this title.

(f) Excluded Transactions. It is recognized that there are a number of lending situations in which other factors significantly outweigh the need to apply the regulatory loan-to-value limits. As a result, an exception to the loan-to-value limits is permissible for the following loan categories:
(1) Loans that are covered through appropriate credit enhancements in the form of readily marketable collateral or other acceptable collateral.
(2) Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.
(3) Loans guaranteed, insured, or otherwise backed by the full faith and credit of the state, a municipality, a county government, or an agency thereof, provided that the amount of the guaranty, insurance, or assurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.
(4) Loans that are to be sold promptly after origination, without recourse, to a financially responsible third party.
(5) Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs) where consistent with safe and sound credit union practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.
(6) Loans that facilitate the sale of real estate acquired by the credit union in the ordinary course of collecting a debt previously contracted in good faith.
(g) Loans to 100% of Value. A credit union may make a loan in an amount up to 100% of the value of real property security if that part of the loan that exceeds the regulatory loan-to-value limit is guaranteed or insured by a private corporation, organization, or other entity. The board of directors must ensure that the credit union exercises appropriate due diligence to ensure that any such guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.
(h) Registration of residential mortgage loan originators. Title V of the Housing and Economic Recovery Act of 2008 (Public Law 110-289) requires employees of a credit union who engage in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and to obtain a unique identifier. A credit union must comply with the requirements imposed by Part 761 of the NCUA Rules and Regulations.

C. (c) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Sections 153.1 (Definitions), 153.5 (Three Percent Fee Limitation: Section 50(a)(6a)(E), 153.15 (Location of Closing: Section 50(a)(6)(N), and 153.51 (Consumer Disclosure: Section 50g).

BACKGROUND:

The proposed amendments implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566 (Tex. 2013). In *Norwood*, the court held that portions of three interpretations adopted by the commissions were invalid: §153.1, §153.5, and §153.15.

The proposed amendment to §153.1(11) replaces the previous definition of "interest" with the definition used by the court.

The proposed amendment to §153.5(3)(A) specifies that per diem interest is interest and is not subject to the three percent limitation.

The proposed amendment to §153.5(3)(B) specifies that legitimate discount points are interest and are not subject to the three percent limitation. The amendment to this section also identifies the conditions that must be satisfied in order for discount points to be considered legitimate under the court's supplemental opinion, and it provides that a lender may rely on an established system to evidence that the discount points it offers are legitimate. In addition, the proposed amendments to paragraphs (4), (6), (8), (9), and (12) add the phrase "as defined by §153.1(11) of this title" after "that are not interest" in provisions describing charges that are subject to the three percent limitation.

The proposed amendment to §153.15(2) specifies that any power of attorney allowing an attorney-in-fact to execute closing documents must be signed at the office of the lender, an attorney at law, or a title company. It provides that a lender may rely on an established system to evidence the date and place at which a power of attorney was signed. The amendment also permits the use of an affidavit or written certification of a person who was present when the power of attorney was executed.

The proposed amendment to §153.15(3) specifies that the required consent form must be signed at the office of the lender, an attorney at law, or a title company. The proposed amendment also specifies that the consent may be signed by an attorney-in-fact described by paragraph (2).

The proposed amendment in §153.51, proposed new paragraph (5) specifies that if a power of attorney described by §153.15(2) has been executed, then the attorney-in-fact may accept the disclosures required under Section 50(g).

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission approve the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move, subject to the approval of the same proposed amendments by the Finance Commission, the Committee recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Sections 153.1, 153.5, 153.15, and 153.51.

Part VIII. Joint Interpretations

Chapter 153. Administrative Interpretation of Subsection (a), Section 50, Article XVI, Texas Constitution, (The Home Equity Lending Law)

§153.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this **chapter** **[~~section~~]**, unless the context indicates otherwise:

(1) Balloon – an installment that is more than an amount equal to twice the average of all installments scheduled before that installment.

(2) Business Day – All calendar days except Sundays and these federal legal public holidays: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(3) Closed or closing – the date when each owner and the spouse of each owner signs the equity loan agreement or the act of signing the equity loan agreement by each owner and the spouse of each owner.

(4) Consumer Disclosure – The written notice contained in Section 50(g) that must be provided to the owner at least 12 days before the date the extension of credit is made.

(5) Cross-default provision– a provision in a loan agreement that puts the borrower in default if the borrower defaults on another obligation.

(6) Date the extension of credit is made – the date on which the closing of the equity loan occurs.

(7) Equity loan – An extension of credit as defined and authorized under the provisions of Section 50(a)(6).

(8) Equity loan agreement – the documents evidencing the agreement between the parties of an equity loan.

(9) Fair Market Value – the fair market value of the homestead as determined on the date that the loan is closed.

(10) Force-placed insurance – insurance purchased by the lender on the homestead when required insurance on the homestead is not maintained in accordance with the equity loan agreement.

(11) **Interest – As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time.** **[~~Interest – interest as defined in the Texas Finance Code §301.002(4) and as interpreted by the courts.~~]**

(12) Lockout provision – a provision in a loan agreement that prohibits a borrower from paying the loan early.

(13) Owner – A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(14) Preclosing Disclosure – The written itemized disclosure required by Section 50(a)(6)(M)(ii).

(15) Three percent limitation – the limitation on fees in Section 50(a)(6)(E).

§153.5. Three percent fee limitation: Section 50(a)(6)(E).

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

(1) Optional Charges. Charges paid by an owner or an owner's spouse at their sole discretion are not fees subject to the three percent fee limitation. Charges that are not imposed or required by the lender, but that are optional, are not fees subject to the three percent limitation. The use of the word "require" in Section 50(a)(6)(E) means that optional charges are not fees subject to the three percent limitation.

(2) Optional Insurance. Insurance coverage premiums paid by an owner or an owner's spouse that are at their sole discretion are not fees subject to the three percent limitation. Examples of these charges may include credit life and credit accident and health insurance that are voluntarily purchased by the owner or the owner's spouse.

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under **§153.1(11) of this title (relating to Definitions)** **[~~the law, for example per diem interest and points,~~]** are not fees subject to the three percent limitation.

(A) Per diem interest is interest and is not subject to the three percent limitation.

(B) Legitimate discount points are interest and are not subject to the three percent limitation. Discount points are legitimate if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are legitimate. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest **§153.1 (11) of this title** are fees subject to the three percent limitation.

(5) Charges Absorbed by Lender. Charges a lender absorbs, and does not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the three percent limitation.

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest **under §153.1(11) of this title** are fees subject to the three percent limitation.

(7) Charges Paid to Third Parties. Charges an owner or an owner's spouse is required to pay to third parties for separate and additional consideration for activities relating to originating a loan are fees subject to the three percent limitation. Charges those third parties absorb, and do not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the three percent limitation. Examples of these charges include attorneys' fees for document preparation and mortgage brokers' fees to the extent authorized by applicable law.

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest **under §153.1(11) of this title**, are fees subject to the three percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, survey, flood zone determination, tax certificate, title report, inspection, or appraisal.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse ~~[at the inception of an equity loan]~~ to maintain **an equity** ~~[the]~~ loan that are not interest **under §153.1(11) of this title** are fees subject to the three percent limitation **if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.** ~~[Charges that are not interest under that an owner pays at the inception of an equity loan to maintain the equity loan, or that are customarily paid at the inception of an equity loan to maintain the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.]~~

(10) Charges to Record. Charges an owner or an owner's spouse is required to pay for the purpose of recording equity loan documents in the official public record by public officials are fees subject to the three percent limitation.

(11) Charges to Insure an Equity Loan. Premiums an owner or an owner's spouse is required to pay to insure an equity loan are fees subject to the three percent limitation. Examples of these charges include title insurance and mortgage insurance protection.

(12) Charges to Service. Charges paid by an owner or an owner's spouse ~~[at the inception of an equity loan]~~ for a party to service **an equity** ~~[the]~~ loan that are not interest **under §153.11(11) of this title** are fees subject to the three percent limitation **if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing**. ~~[Charges that are not interest that an owner pays at the inception of an equity loan to service the equity loan, or that are customarily paid at the inception of an equity loan to service the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.]~~

(13) Secondary Mortgage Loans. A lender making an equity loan that is a secondary mortgage loan under Chapter 342 of the Texas Finance Code may charge only those fees permitted in TEX. FIN. CODE, §§342.307, 342.308, and 342.502. A lender must comply with the provisions of Chapter 342 of the Texas Finance Code and the constitutional restrictions on fees in connection with a secondary mortgage loan made under Chapter 342 of the Texas Finance Code.

(14) Escrow Funds. A lender may provide escrow services for an equity loan. Because funds tendered by an owner or an owner's spouse into an escrow account remain the property of the owner or the owner's spouse those funds are not fees subject to the three percent limitation. Examples of escrow funds include account funds collected to pay taxes, insurance premiums, maintenance fees, or homeowner's association assessments. A lender must not contract for a right of offset against escrow funds pursuant to Section 50(a)(6)(H).

(15) Subsequent Events. The three percent limitation pertains to fees paid or contracted for by an owner or owner's spouse at the inception or at the closing of an equity loan. On the date the equity loan is closed an owner or an owner's spouse may agree to perform certain promises during the term of the equity loan. Failure to perform an obligation of an equity loan may trigger the assessment of costs to the owner or owner's spouse. The assessment of costs is a subsequent event triggered by the failure of the owner's or owner's spouse to perform under the equity loan agreement and is not a fee subject to the three percent limitation. Examples of subsequent event costs include contractually permitted charges for force-placed homeowner's insurance costs, returned check fees, debt collection costs, late fees, and costs associated with foreclosure.

(16) Property Insurance Premiums. Premiums an owner or an owner's spouse is required to pay to purchase homeowner's insurance coverage are not fees subject to the three percent limitation. Examples of property insurance premiums include fire and extended coverage insurance and flood insurance. Failure to maintain this insurance is generally a default provision

of the equity loan agreement and not a condition of the extension of credit. The lender may collect and escrow premiums for this insurance and include the premium in the periodic payment amount or principal amount. If the lender sells insurance to the owner, the lender must comply with applicable law concerning the sale of insurance in connection with a mortgage loan.

§153.15. Location of Closing: Section 50(a)(6)(N).

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) An equity loan must be closed at the permanent physical address of the office or branch office of the lender, attorney, or title company. The closing office must be a permanent physical address so that the closing occurs at an authorized physical location other than the homestead.

(2) Any ~~[A lender may accept a properly executed]~~ power of attorney allowing an ~~[the]~~ attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at an office of the lender, an attorney at law, or a title company. A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph. For example, this system may include one or more of the following:

(A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed;

(B) an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed; or

(C) a certificate of acknowledgement signed by a notary public under Chapter 121, Civil Practice and Remedies Code, acknowledging the date and place at which the power of attorney was executed.

(3) The [A lender may receive] consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at an office of the lender, an attorney at law, or a title company ~~[by mail or other delivery of the party's signature to an authorized physical location and not the homestead]~~.

§153.51. Consumer Disclosure: Section 50(g).

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) If a lender mails the consumer disclosure to the owner, the lender shall allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(2) Certain provisions of the consumer disclosure do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(3) A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

(4) A lender whose discussions with the borrower are conducted primarily in Spanish for a close-end loan may rely on the translation of the consumer notice developed under the requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

(5) If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

Title 7. Banking and Securities
Part 8. Joint Financial Regulatory Agencies
Chapter 153. Home Equity Lending
§§153.1, 153.5, 153.15, & 153.51

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to the following home equity lending interpretations: §§153.1, concerning Definitions, 153.5, concerning Three percent fee limitation, 153.15, concerning Location of Closing, and 153.51, concerning Consumer Disclosure.

The amendments apply the administrative interpretation of the home equity lending provisions of Article XVI, Section 50 of the Texas Constitution ("Section 50") allowed by Section 50(u) and Texas Finance Code, §§11.308 and 15.413.

The main purpose of the proposed amendments is to implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566 (Tex. 2013). In *Norwood*, the court held that portions of three interpretations adopted by the commissions were invalid: §§153.1, 153.5, and 153.15.

In 1997, the Texas Constitution was amended to authorize home equity loans. After further amendments in 2003, the commissions were authorized to adopt interpretations of the constitution's home equity provisions, subject to the requirements of the Texas Administrative Procedure Act. The commissions adopted their interpretations in 2004. A group of homeowners sued the commissions, challenging several of the adopted interpretations. The case was ultimately appealed to the Texas Supreme Court and resulted in the court's decision in *Finance Commission of Texas v. Norwood.*

In *Norwood*, the court invalidated certain provisions interpreting Section 50(a)(6)(E), which provides that a home equity loan may not "require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit." The court invalidated §153.1(11) of the commissions' interpretations, which defined "interest" for purposes of the three percent limitation as "interest as defined in the Texas Finance Code §301.002(4) and as interpreted by the courts." The court held that interest means "the amount determined by multiplying the loan principal by the interest rate." 418 S.W.3d at 588. The court also invalidated paragraphs (3), (4), (6), (8), (9), and (12) of §153.5, which applied the commissions' original definition of "interest" to several specific types of charges for purposes of the three percent limitation. In the supplemental opinion, the court explained that interest includes per diem interest and legitimate discount points, and that these amounts are not included in the three percent limitation. 418 S.W.3d at 596.

The court also invalidated provisions interpreting Section 50(a)(6)(N), which provides that a home equity loan must be "closed only at the office of the lender, an attorney at law, or a title company." The court invalidated §153.15(2), which allowed

a lender to accept a properly executed power of attorney authorizing someone to close a loan on a homeowner's behalf. It also invalidated §153.15(3), which allowed a lender to accept the homeowner's consent by mail. In the supplemental opinion, the court explained that "a power of attorney must be part of the closing to show the attorney-in-fact's authority to act." 418 S.W.3d at 596.

After the court issued its supplemental opinion, the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Credit Union Department ("agencies") prepared an initial draft of amendments implementing the court's decision. The agencies distributed the initial draft to home equity stakeholders for precomments, in order to prepare an informed and well-balanced proposal for the commissions. The agencies received written precomments from several stakeholders.

Upon review of the precomments, the agencies prepared a second precomment draft incorporating several of the suggestions from the initial round of precomments. The agencies sent this second precomment draft to stakeholders, together with written explanations of the changes that had been made from the initial draft. The agencies received additional written precomments on the second draft.

The agencies have incorporated certain suggestions offered by stakeholders into the proposed amendments. The agencies believe that this early participation of stakeholders has greatly benefited the resulting proposal.

As stated earlier, the main purpose of the proposed amendments is to implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood.* The individual purposes of each amendment are provided below.

The proposed amendment to §153.1(11) replaces the previous definition of "interest" with the definition used by the court. One precommenter suggested including the phrase "over a period of time" in the definition. This phrase is included in the proposed amendment in order to clarify the time component in the definition. In addition, in its supplemental opinion, the court used the phrase "over a period of time" in applying the general definition of "interest." 418 S.W.3d at 596.

The precise mathematical formulation of interest and the exact nature of the applicable time period will be described in the loan contract. For example, in a loan contract using the true-daily-earnings method, the interest is calculated by dividing an annual rate by 365 and multiplying that amount by the outstanding principal each day. Other loan contracts will use different methods. Because different contracts will describe different methods for calculating interest, it is unnecessary for the amendments to specify a precise method. The purpose of the amendment is to describe how an amount already calculated under the contract will be excluded from the three percent limitation. The definition as proposed appears to achieve this purpose.

The proposed amendment to §153.5(3)(A) specifies that per diem interest is interest and is not subject to the three percent limitation. In the supplemental opinion, the court considered all per diem interest to be interest, as did the parties. The court stated: "We agree with [the parties] that per diem interest is still interest, though prepaid; it is calculated by applying a rate to principal over a period of time." 418 S.W.3d

at 596. In other words, the fact that per diem interest is prepaid does not affect its basic character as interest.

The proposed amendment to §153.5(3)(B) specifies that legitimate discount points are interest and are not subject to the three percent limitation. The amendment also identifies the conditions that must be satisfied in order for discount points to be considered legitimate under the court's supplemental opinion, and it provides that a lender may rely on an established system to evidence that the discount points it offers are legitimate.

The proposed amendments to paragraphs (4), (6), (8), (9), and (12) of §153.5 add the phrase "as defined by §153.1(11) of this title" after "that are not interest" in provisions describing charges that are subject to the three percent limitation.

In response to precomments, paragraphs (9) and (12), regarding charges to maintain and service the loan, are also amended to provide clarity and delete redundant text. These changes are intended to be nonsubstantive. Charges to maintain or service the loan that are not customarily included at inception because they arise due to subsequent events (e.g., nonsufficient funds fees, payoff statement fees, fees for an updated flood determination) would continue not to be subject to the three percent limitation under the amended text.

The proposed amendment to §153.15(2) specifies that any power of attorney allowing an attorney-in-fact to execute closing documents must be signed at the office of the lender, an attorney at law, or a title company. It also provides that a lender may rely on an established system to evidence the date and place at which a power of attorney was signed. In response to precomments, the amendment permits the use of an affidavit or written certification of a person who was present when the power of attorney was executed.

Several stakeholders expressed concern that the amendments would somehow restrict the use of powers of attorney to the circumstances specified in the amendments. The amendments acknowledge three situations in which powers of attorney can be used (closing documents, signing the required consent, and receiving the consumer disclosure), but this does not prohibit the use of a power of attorney in other circumstances. The purpose of the amendments is to address the portion of the court's decision relating to the location of closing. It would be outside the intended scope of the amendments to provide a comprehensive statement of the circumstances in which a lender can (or should) use powers of attorney, or a statement of the conditions that must be satisfied in every power of attorney relating to a home equity loan. Apart from the circumstances described in the proposed amendments, the use of powers of attorney is largely an underwriting decision for the lender.

One stakeholder suggested that the amendments specify that the power of attorney must be signed at a permanent physical address. This change does not seem necessary. The current text of §153.15(1) already specifies that the authorized physical location for closing must be a permanent physical address. This provision should be sufficient to prohibit lenders from circumventing the interpretations through the use of nonpermanent locations.

The proposed amendment to §153.15(3) specifies that the required consent form must be signed at the office of the lender, an attorney at law, or a title company. In response to a precomment, the proposed amendment also specifies that the consent may be signed by an attorney-in-fact described by paragraph (2).

One stakeholder expressed concern about executing the consent form at one location and sending it to another. The amendments do not prohibit any party from sending documents from one place to another, as long as the documents are executed at an authorized location.

In §153.51, proposed new paragraph (5) specifies that if a power of attorney described by §153.15(2) has been executed, then the attorney-in-fact may accept the disclosures required under Section 50(g).

Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission and Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas have determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the interpretations.

Commissioner Feeney and Commissioner Pettijohn have also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the amendments will be to create standards and guidelines for both lenders and borrowers, fostering a stable environment for the extension of home equity loans.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. Any costs are imposed by the constitution and are not imposed by the proposed amendments. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commissions.

The amendments are proposed under Article XVI, Section 50(u) of the Texas Constitution and Texas Finance Code, §§11.308 and 15.413, which authorize the commissions to adopt interpretations of Article XVI, Section 50(a)(5)-(7), (e)-(p), (t), and (u) of the Texas Constitution.

The constitutional provisions affected by the proposed amendments are contained in Article XVI, Section 50 of the Texas Constitution.

§153.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following

meanings when used in this chapter [~~section~~], unless the context indicates otherwise:

(1) - (10) (No change.)

(11) Interest--As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time. [~~Interest--interest as defined in the Texas Finance Code §301.002(4) and as interpreted by the courts.~~]

(12) - (15) (No change.)

§153.5. Three percent fee limitation: Section 50(a)(6)(E)

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

(1) - (2) (No change.)

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(11) of this title (relating to Definitions) [~~the law, for example per diem interest and points,~~] are not fees subject to the three percent limitation.

(A) Per diem interest is interest and is not subject to the three percent limitation.

(B) Legitimate discount points are interest and are not subject to the three percent limitation. Discount points are legitimate if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are legitimate. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest under §153.1(11) of this title are fees subject to the three percent limitation.

(5) (No change.)

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest under §153.1(11) of this title are fees subject to the three percent limitation.

(7) (No change.)

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(11) of this title, are fees subject to the three percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, survey, flood zone determination, tax certificate, title report, inspection, or appraisal.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse [~~at the inception of an equity loan~~] to maintain an equity [~~the~~] loan that are not interest under §153.1(11) of this title are fees subject

to the three percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing. [~~Charges that are not interest that an owner pays at the inception of an equity loan to maintain the equity loan, or that are customarily paid at the inception of an equity loan to maintain the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.~~]

(10) - (11) (No change.)

(12) Charges to Service. Charges paid by an owner or an owner's spouse [~~at the inception of an equity loan~~] for a party to service an equity [~~the~~] loan that are not interest under §153.1(11) of this title are fees subject to the three percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing. [~~Charges that are not interest that an owner pays at the inception of an equity loan to service the equity loan, or that are customarily paid at the inception of an equity loan to service the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.~~]

(13) - (16) (No change.)

§153.15. Location of Closing: Section 50(a)(6)(N)

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) (No change.)

(2) Any [~~A lender may accept a properly executed~~] power of attorney allowing an [~~the~~] attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at an office of the lender, an attorney at law, or a title company. A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph. For example, this system may include one or more of the following:

(A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed;

(B) an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed; or

(C) a certificate of acknowledgement signed by a notary public under Chapter 121, Civil Practice and Remedies Code, acknowledging the date and place at which the power of attorney was executed.

(3) The [~~A lender may receive~~] consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at an office of the lender, an attorney at law, or a title company [~~by mail or other delivery of the party's signature to an authorized physical location and not the homestead~~].

§153.51. Consumer Disclosure: Section 50(g)

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) - (4) (No change.)

(5) If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

Certification

The agencies hereby certify that the proposal has been reviewed by legal counsel and found to be within the commissions' legal authority to adopt.

Issued in Austin, Texas on June 20, 2014.

Leslie Pettijohn
Consumer Credit Commissioner
Joint Financial Regulatory Agencies

CALL REPORTS

C. (d) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.209 Concerning Call Reports and Other Information Requests.

BACKGROUND: In January NCUA announced its decision to impose penalties against federally insured credit unions that fail to meet filing deadlines for call reports. They indicated that penalties would be assessed per day according to ranges set out in the Federal Credit Union Act, but NCUA would 'consider mitigating factors,' such as a credit union's filing history, the gravity of the violation, and other circumstances, such as a natural disaster that prevented timely filing. NCUA specifically emphasized that it would impose these penalties solely to deter late filing. Any funds collected would be remitted to the U.S. Treasury, not retained for NCUA use.

NCUA has magnanimously agreed to reduce its penalty by any amount that we might assess under 7 TAC Section 91.209 for the same late filing, however, given the potential size of NCUA's proposed fines, any penalty we might assess could pale in comparison. Since any penalty assessed by NCUA will go directly to the U.S. Treasury, we are proposing the amendments as a means to keep the funds in Texas. Staff tends to believe that such penalties could be better used to help reduce the amount of operating fees we need to collect from credit unions instead of giving the money to Congress to spend.

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission approve the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move the Committee recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.209.

<p>The Credit Union Commission (the Commission) proposes amendments to <*>91.209 concerning Call Reports and Other Information Requests. The amendments increase the Commissioner's flexibility to assess penalties when a credit union fails to file a timely and accurate quarterly financial and statistical report. Such penalties are intended as a deterrent to late, incomplete, and inaccurate filing of required reports

<p>The amendments are proposed in response to the imposition of penalties by the National Credit Union Administration (NCUA) when a credit union fails to file a timely and accurate quarterly financial and statistical report. The penalties proposed by NCUA for late or incomplete filing will be reduced by the amount of the penalties imposed by a state regulator for the same conduct. Penalties paid by credit unions to NCUA are entered into the United States Treasury funds, while penalties paid to the Department are maintained by the agency to support the regulatory framework of Texas state chartered credit unions. The amendments to this rule would not change the amount of the penalty paid by any credit union, but would simply allow the Department to retain the amounts collected for the benefit of Texas state chartered credit unions.

<p>Stacey McLarty, General Counsel, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

<p>Ms. McLarty has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

<p>Written comments on the proposal must be submitted within 30 days after its publication in the <eti>Texas Register<et> to Stacey McLarty, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

<p>The amendments are proposed under Texas Finance Code, <*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code <*>122.101, which directs credit unions to submit call report to the Commissioner and permits the Commissioner to charge a fee for late reports, and <*>122.254 which sets out criminal penalties for providing false information.

<p>The specific sections affected by the proposed amended rule are Texas Finance Code, <*>122.101 and <*>122.254.

<*>91.209. Call Reports and Other Information Requests.

(a) Each credit union shall file a quarterly financial and statistical report with the Department no later than 22 days after the end of each calendar quarter. Unless the commissioner orders otherwise, call reports (Form 5300) timely filed with the National Credit Union Administration will comply with the reporting requirements of this subsection. If a credit union fails to file the quarterly report on time, the commissioner may charge the credit union a penalty of $100 for each day or fraction of a day the report is in arrears.

(b) Any credit union that makes, files, or submits a false or misleading financial and statistical report required by subsection (a) of this section, is subject to an enforcement action pursuant to the Finance Code, Chapter 122, Subchapter F.

(c) A credit union shall prepare and forward to the Department any supplemental report or other document that the Commissioner may, from time to time require, and must comply with all instructions relating to completing and submitting the supplemental report or document. For the purposes of this section, the Commissioner's request may be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing, and must specifically advise the credit union that the provisions of this section apply to the request. If a credit union fails to file a supplemental report or provide a requested document within the timeframe specified in the instruction, after notice of non-receipt, the commissioner may levy a penalty $50 for each day or fraction of a day such report or document is in arrears.

(d) If a credit union fails to file any report or provide the requested information within the specified time, the commissioner, or any person designated by the commissioner, may examine the books, accounts, and records of the credit union, prepare the report or gather the information, and charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.

(e) Any penalty levied under this section shall be paid within 30 days of the levy. Penalties received after the due date will be subject to a monthly 10% fee unless waived by the commissioner for good cause shown.

(f) The Department may, in lieu of imposing the penalty authorized by subsection (a), order a credit union to pay an amount, fixed by the Commissioner, that is minimally sufficient to negate the credit union being assessed a civil money penalty under Section 202 of the Federal Credit Union Act (12 U.S.C. § 1782) for late or false/misleading filing of a quarterly call report (Form 5300). This penalty shall be abated in part if the National Credit Union Administration exercises its authority to impose a civil money penalty for the same late or false/misleading filing. The penalty, however, shall not be decreased below the amount authorized to be levied under subsection (a).

NEXT MEETING AND ADJOURNMENT

C. (e) Discussion of and Vote to Establish Date for Next Committee Meeting.

BACKGROUND: The next regular meeting of the Committee has been tentatively scheduled for October 16, 2014, at 2:00 p.m. in Austin.

ADJOURNMENT